

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 EHR 05958

Respondent.

SETTLEMENT AGREEMENT

The Parties participated in an informal settlement conference on October 8, 2015. Based on information presented during and subsequent to that settlement conference, and in order to avoid the

1 The North Carolina Department of Environment and Natural Resources has been renamed the Department of Environmental Quality effective September 18, 2015.

cost and delay of litigation, the Section and GM Nameplate have reached the following agreement:

1. This Settlement Agreement is a negotiated compromise between the Parties. Neither this Settlement Agreement nor any action on the part of the Parties hereto shall be deemed an admission of liability with regard to the alleged violations of the State Hazardous Waste Program cited in the Order, incorporated herein by reference.
2. GM Nameplate shall pay to the Section a recomputed penalty in the amount of nineteen thousand, one hundred and sixty-eight dollars (\$19,168.00) in settlement of the penalty assessed in the Order. The Section agrees to accept the payment of the recomputed penalty in complete satisfaction of the original penalty assessed in the Order, subject to the terms of this Settlement Agreement. GM Nameplate shall pay the recomputed penalty in two equal installments of nine thousand five hundred and eighty-four dollars (\$9,584.00), with the first installment due within thirty (30) days of the execution of this Settlement Agreement and the second installment due within sixty (60) days of the execution of this Settlement Agreement.
3. In accordance with N.C.G.S. § 130A-22(j), and as outlined in Paragraph 3 of the “Conditions for Continued Operation” section of the Order, the Section also assessed investigative and inspection costs to GM Nameplate totaling seven hundred and seventy-six dollars and fifty-eight cents (\$776.58). GM Nameplate shall pay these costs to the Section in one installment within thirty (30) days of the execution of this Settlement Agreement.
4. The payments required under Paragraphs 2 and 3 of this Settlement Agreement shall be made by two separate certified checks or money orders, one for the recomputed penalty and one for

the investigative and inspection costs, payable to the Division of Waste Management, and mailed to Julie S. Woosley, Chief, Hazardous Waste Section, 1646 Mail Service Center, Raleigh, NC 27699-1646.

5. Additionally, the Section assessed large quantity generator facility fees totaling five thousand seventy-five dollars (\$5,075.00), in accordance with N.C.G.S. § 130A-294.1(e), and large quantity generator tonnage fees totaling ten dollars and sixty-four cents (\$10.64), in accordance with N.C.G.S. § 130A-294.1(g), as outlined in Paragraph 3 of the “Conditions for Continued Operation” section of the Order. In light of information learned through settlement discussions, the Section hereby acknowledges that GM Nameplate does not owe these specific fees.
6. GM Nameplate expressly waives its right to an administrative hearing on the Order. Within ten (10) days of the full execution of this Settlement Agreement, GM Nameplate shall file with the Office of Administrative Hearings a Notice of Dismissal with Prejudice, withdrawing its Petition for a Contested Case Hearing in *GM Nameplate, Inc. v. N.C. Department of Environment and Natural Resources*, 15 EHR 05958.
7. GM Nameplate expressly stipulates and acknowledges that, by entering into this Settlement Agreement, it waives for purposes of collection of the above-described recomputed penalty, fees, and costs any and all defenses to the underlying assessment of said penalty, fees, and costs, and that the issue in any action to collect the penalty, fees, or costs will be limited to the payment or non-payment thereof in accordance with the terms of this Settlement Agreement.

8. Nothing in this Settlement Agreement shall restrict the right of the Section to inspect GM Nameplate and take enforcement action against GM Nameplate for any new, subsequent or repeat violations of the State Hazardous Waste Program not alleged in the Order. It is further understood that GM Nameplate may contest any subsequent enforcement action based on allegations of new, subsequent or repeat violations not alleged in the Order, to the extent such right is provided in Chapter 130A of the North Carolina General Statutes, by other applicable State or Federal rule or law, by common law, or by the United States or North Carolina Constitutions.
9. GM Nameplate and the Section agree that each shall bear its own costs related to any disputes covered by this Settlement Agreement. Neither GM Nameplate nor the Section shall apply for attorney fees or costs under any rule or law, and neither shall be liable for any attorney fees, costs, or expenses incurred by the other, except as otherwise provided in this Settlement Agreement.
10. GM Nameplate and the Section agree that the consideration for this settlement is in the promises contained herein, that this Settlement Agreement contains the whole agreement between them, and that there are no understandings or agreements, verbal or otherwise, regarding this Settlement Agreement except as expressly set forth herein.
11. This Settlement Agreement is contractual in nature and not just a recitation of terms. The language of this Settlement Agreement shall be construed, enforced, and governed by the laws of the State of North Carolina.
12. Each provision of this Settlement Agreement is intended to be severable, and if any provision

is held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect or impair any other provision of this Settlement Agreement, but this Settlement Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained therein.

13. This Settlement Agreement shall be binding upon and inure to the benefit of the assigns, predecessors, successors, officers, agents, directors, employees, board, and administrators of GM Nameplate and to the Section, its officials, managers, employees, assigns, predecessors, and successors.
14. This Agreement shall be binding upon the Parties upon execution by the undersigned. The Agreement becomes effective on the last date of the signatures of the undersigned.
15. The corporate officer signing on behalf of GM Nameplate hereby warrants that he is competent to enter into this Settlement Agreement, that he has authority to enter into this Settlement Agreement on behalf of GM Nameplate, and that no court or tribunal of competent jurisdiction has found him to be incompetent or otherwise incapable of handling his business affairs or entering into a binding agreement or contract.
16. The undersigned representative of the Parties hereby acknowledge that they have read this Settlement Agreement, conferred with their attorneys or had the opportunity to confer with an attorney, fully understand the contents of the Settlement Agreement, consent to the settlement of claims on the terms set forth herein, and do so in reliance upon their own judgment and, if represented by counsel, the advice of their attorneys, and not in reliance on any other representations or promises of the other party, its representatives, or its attorneys.

THE PARTIES ACKNOWLEDGE THAT EACH HAS CAREFULLY READ THIS ENTIRE AGREEMENT AND FULLY UNDERSTANDS ITS CONTENTS AND ITS LEGAL AND BINDING EFFECT. EACH PARTY FURTHER ACKNOWLEDGES THAT EACH MAKES A KNOWING AND VOLUNTARY WAIVER OF THEIR RIGHTS IN EXCHANGE FOR THE CONSIDERATION SPECIFIED IN THIS AGREEMENT.

IN WITNESS WHEREOF, this Settlement Agreement is executed in duplicate originals:

FOR THE NORTH CAROLINA DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES:

Julie S. Woodsley
Julie S. Woodsley
Chief, Hazardous Waste Section
Division of Waste Management

12/9/15
Date

NORTH CAROLINA
County of WAKE

I, Kelly B. Galantis, a Notary
Public for said County and State, do hereby certify
that Julie S. Woodsley
personally appeared before me this day, is personally
known to me or provided official identification in the
form of personally known, and
acknowledged the due execution of the foregoing
instrument.

Witness my hand official seal, this the 9 day of
December, 2015.

Kelly B. Galantis
Notary Public

(Official Seal)
KELLY B. GALANTIS
Notary Public
Johnston County, NC
My Commission Expires 8-27-18

My Commission expires: 8-27-18

FOR GM NAMEPLATE, INC:

Jack Sharrett
Jack Sharrett
President, NC Division
GM Nameplate, Inc.

12/2/15
Date

State of North Carolina
County of Union

I, Richard L. Alvey, a Notary
Public for said County and State, do hereby certify
that Jack Sharrett
personally appeared before me this day, is personally
known to me or provided official identification in the
form of not ID, and
acknowledged the due execution of the foregoing
instrument.

Witness my hand official seal, this the 2 day of
December, 2015.

Richard L. Alvey
Notary Public

(Official Seal)

My Commission expires: March 10, 2020

THE PARTIES AGREE THAT THE ENTIRE CONTENTS OF THIS INSTRUMENT ARE TRUE AND CORRECT AND THAT THE PARTIES HAVE ENTERED INTO THIS INSTRUMENT VOLUNTARILY AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR FRAUD. THE PARTIES AGREE TO WAIVE ANY RIGHTS OR REMEDIES THAT THEY MAY HAVE IN CONNECTION WITH THIS INSTRUMENT.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals at the County of Wake, State of North Carolina, this 1st day of January, 2015.

FOR DONALD W. BROWN

FOR THE COUNTY OF WAKE
COUNTY CLERK

Jack Brown

President, NC Division

(DM Nameplate, Inc.)

County of Wake
Wake County

Date

Date

NORTH CAROLINA
County of Wake

State of North Carolina
County of Wake

I, the undersigned, a Notary Public for said County and State, do hereby certify that the foregoing instrument was duly executed by the person or persons whose names are subscribed to the same, and that the same is a true and correct copy of the original instrument as the same appears from the records of the County of Wake, State of North Carolina.

I, the undersigned, a Notary Public for said County and State, do hereby certify that the foregoing instrument was duly executed by the person or persons whose names are subscribed to the same, and that the same is a true and correct copy of the original instrument as the same appears from the records of the County of Wake, State of North Carolina.

Witness my hand and official seal this 1st day of January, 2015.

My Commission Expires: 1/1/2017
JERRY E. GARNETT
Notary Public
Wake County, NC

Notary Public

(Official Seal)

My Commission Expires: 1/1/2017

